

### **REMARKS**

The Applicant has carefully reviewed the Office Action mailed September 26, 2007 and offers the following remarks to accompany the above amendment.

Initially, the Applicant wishes to thank Examiner Nguyen for taking the time to discuss the pending application with the Applicant's representative, Tony Josephson, on December 10, 2007. During the Telephonic Examiner Interview, the Applicant's representative and Examiner Nguyen discussed the rejection of claim 35 under 35 U.S.C. § 101. More specifically, Examiner Nguyen kindly pointed out that the amendment noted above to claim 35 would overcome part of the rejection, as will be discussed further below. No agreement was reached regarding the allowability of the pending claims.

The Applicant also wishes to thank the Examiner for indicating that claims 3-5 and 20-22 would be allowable if rewritten in independent form. As will be detailed below, claims 1 and 18, the base claims from which claims 3-5 and 20-22 respectively depend, are patentable over the cited references. Therefore, the Applicant will refrain from amending claims 3-5 and 20-22 at this time. Nevertheless, the Applicant reserves the right to rewrite claims 3-5 and 20-22 at a later time.

Claim 35 was rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. More specifically, the Patent Office indicated that the language of claim 35 raises a question as to whether or not the claim is tied to a technological art which would result in a practical application producing a concrete, useful, and tangible result to form the basis of statutory subject matter under 35 U.S.C. § 101. The Applicant respectfully traverses the rejection.

Initially, the Applicant points out that claim 35 recites software "for controlling access to emergency services" where the software includes instructions for a control system to, among other features, "receive call setup requests," "determine select call setup requests from the call setup requests," and "forward the select call setup requests toward at least one terminating device." Thus, the technological art of claim 35 generally relates to communications and particularly to handling emergency calls.

According to Chapter 2106 of the M.P.E.P., a claimed invention is directed to patentable subject matter when the claimed subject matter produces a useful, concrete, and tangible result. The Applicants submit that the invention recited in claim 35 produces a useful, concrete, and

tangible result. Chapter 2106 of the M.P.E.P. states that in order for a claimed invention to be useful, the invention must satisfy the utility requirement of 35 U.S.C. § 101. According to Chapter 2107 of the M.P.E.P., if an Applicant asserts that a claimed invention is useful for any particular practical purpose where the assertion would be considered credible by a person of ordinary skill in the art, then the claimed invention complies with the “useful invention” requirement of 35 U.S.C. § 101.

The invention recited in claim 35 is useful for a practical purpose which is considered credible by one of ordinary skill in the art. More specifically, the practical purpose of claim 35 lies in providing a technique to control access to emergency services. In an effort to control access to emergency services, the technique determines select call setup requests from call setup requests where the selected call setup requests are received from users authorized to initiate a call for emergency services. One skilled in the art would recognize that the practical purpose of claim 35 would be controlling access to emergency services. Moreover, one skilled in the art would recognize that controlling access to emergency services is useful and credible in that controlling access would minimize the possibility of abusive, malicious, or unauthorized use of emergency services, thereby maintaining these emergency services for those in need. Thus, the invention recited in claim 35 satisfies the utility requirement of 35 U.S.C. § 101 and is therefore useful.

As mentioned above, a claimed invention is directed to patentable subject matter when the claimed invention produces a tangible result. According to Chapter 2106 of the M.P.E.P., in order to meet the tangible result requirement under 35 U.S.C. § 101, the claimed invention must produce a real-world result. The Applicants submit that the invention recited in claim 35 produces a real-world result. Particularly, the invention recited in claim 35 achieves the real-world result of controlling access to emergency services, as detailed above. The Applicants submit that controlling access to emergency services is a tangible result. Therefore, the invention recited in claim 35 produces a tangible result.

As indicated above, a claimed invention is directed to patentable subject matter when the claimed invention produces a concrete result. According to Chapter 2106 of the M.P.E.P., in order to meet the concrete result requirement under 35 U.S.C. § 101, the claimed invention must have a result that is substantially repeatable. As discussed above, the invention recited in claim 35 controls access to emergency services. The invention recited in claim 35 receives call setup

requests, determines select call setup requests from the call setup requests, and forwards the select call setup requests toward at least one terminating device. The Applicants submit that the steps of receiving call setup requests, determining select call setup requests from the call setup requests, and forwarding the select call setup requests toward at least one terminating device are substantially repeatable. Accordingly, the invention recited in claim 35 produces a concrete result. As the invention recited in claim 35 is useful and produces both a tangible and concrete result, claim 35 is statutory.

The Office Action also indicated that the “Applicant’s disclosure has no support of what media has been positively disclosed as.”<sup>1</sup> During the Telephonic Examiner Interview, Examiner Nguyen kindly pointed out that the amendment noted above to claim 35 overcomes this portion of the rejection under 35 U.S.C. § 101. Therefore, the Applicant submits that claim 35 is directed toward statutory subject matter and requests that the rejection be withdrawn.

Claims 1, 2, 6-19, and 23-35 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2007/0121590 A1 to *Turner et al.* (hereinafter “*Turner*”) in view of U.S. Patent Application Publication No. 2004/0190522 A1 to *Aerrabotu et al.* (hereinafter “*Aerrabotu*”). The Applicant respectfully traverses the rejection.

Initially, the Applicant wishes to point out that the present application has a filing date of June 26, 2003. *Aerrabotu* published on September 30, 2004, well after the June 26, 2003 filing date of the present application. Furthermore, *Aerrabotu* has a filing date of March 31, 2003. Accordingly, *Aerrabotu* is only prior art against the present application under 35 U.S.C. § 102(e). The Applicants have submitted herewith a Declaration from Benjamin S. Withrow stating that he received instructions to prepare the present application on or about February 5, 2003. The instructions included an invention disclosure attached as Appendix A to the Declaration. Particularly, page 7, lines 19-22, page 8, lines 17-19, page 9, lines 19-21 and lines 26-28, and page 10, lines 1-26 of the attached Invention Disclosure disclose the invention claimed in the present application. Therefore, the present application has a conception date of at least February 5, 2003, well before the March 31, 2003 filing date of *Aerrabotu*. Furthermore, as evidenced by the Declaration, Mr. Withrow diligently worked on the application from this February 5, 2003 conception date until the June 26, 2003 filing date of the present application. As the present application has a conception date which predates the filing date of *Aerrabotu* and

---

<sup>1</sup> See Office Action mailed September 26, 2007, page 2.

the Applicants were diligent from the date of conception until the filing date of the present application, *Aerrabotu* is an improper reference. Therefore, the rejection of claims 1, 2, 6-19, and 23-35 under 35 U.S.C. § 103(a) over *Turner* and *Aerrabotu* is improper and the Applicant respectfully requests that the rejection be withdrawn.

The present application is now in a condition for allowance and such action is respectfully requested. The Examiner is encouraged to contact the Applicant's representative regarding any remaining issues in an effort to expedite allowance and issuance of the present application.

Respectfully submitted,

WITHROW & TERRANOVA, P.L.L.C.

By:



Anthony J. Josephson  
Registration No. 45,742  
100 Regency Forest Drive, Suite 160  
Cary, NC 27518  
Telephone: (919) 238-2300

Date: December 19, 2007  
Attorney Docket: 7000-237A